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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,083	12/02/2003	Barbara Jean Stinnette Watson	STINN-001-US	2724

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EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,083

Applicant(s)

WATSON, BARBARA JEAN
STINETTE

Examiner

James N. Smalley

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-13 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date, _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06 July 2006 has been entered.

Election/Restrictions

2. Newly submitted claim 14 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claim is drawn to a method of manufacture, which is restrictable from the originally elected apparatus claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 14 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7, 2nd-to-last line on page 2, it is not clear to what dimension of the elastic cord 275 mm pertains.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leventhal US 3,670,954 in view of McGlew et al. US 6,164,824.

Leventhal '954 teaches a polyethylene garbage/leaf bag with a heat sealed end from alternating folds with the centerline (31) in the middle of the folds, as is best seen in figure 2. In column 2, lines 22-29, the reference teaches the sides may be heat sealed instead of the bag being formed from tube plastic.

The reference fails to teach the bottom edges being folded back in order to create a hem in order to insert an elastic cord.

McGlew '824 teaches a plastic garbage bag with an open end contains an elastic cord (14) in a heat-sealed fold of the upper edges at (16) of the sheets. The reference teaches in the Background of the Invention, lines 18-23 that early trashbags only included twist ties, and that the purpose of providing the bag with the elastic is to make the bag easy to remove and effect means for keeping the top end of the trash bag in position relative to the trash can.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bag of Leventhal '954, providing the downturned seam and elastic, as taught by McGlew '824, motivated by the benefit of making the bag easy to remove and effecting means for keeping the top end of the trash bag in position relative to the trash can.

Furthermore, the combined references fail to teach the claimed dimensions of the sheets being 2.0 mm thick, the top and bottom being at least 910 mm wide, the sides being at least 450 mm tall, the hem being 25 mm and the handle being formed of the top 50 mm, such that the cover has a maximum diameter of about 1020 mm and a maximum depth of at least 450 mm.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to size the sheets of the bag of McGlew '824 to 2.0 mm thick, the top and bottom being at least 910 mm wide, the sides being at least 450 mm tall, the hem being 25 mm and the handle being formed of the top 50 mm, such that the cover has a maximum diameter of about 1020 mm and a maximum depth of at least 450 mm, or to any other suitable sizes because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Furthermore the references fail to teach the elastic cord being 275 mm, with an elasticity of about 1020 mm and a diameter of less than 2 mm.

It would have been obvious to one having ordinary skill in the art to form the hem to 25 mm, or to any other suitable size. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the elastic cord to 275 mm, with an elasticity of 1020 mm and a diameter of less than 2 mm, or to any other suitable values, motivated by the benefit of providing a suitable elasticity which will enable the bag to securely fit over or within the container onto which it is to be applied since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 8, the cover is capable of being disposed.

Regarding claims 9-13, because the claims are drawn to a cover *for use with* containers, the references need only meet the claimed structure, and be capable of being used in the intended manner. In the instant case, the bag of Freeman '573 is capable of being used in the intended manner, e.g. a plurality of the covers may be packaged together, it could be used to prevent gases, liquids and solids from entering the associated container, it may be used to cover shrubbery, it could prevent frost from killing shrubbery, and it could be used to cover paintings. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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Response to Arguments

7. Applicant's arguments with respect to claims 7-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER